IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13689 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAROT SUBJI RATANJI

Versus

DISTRICT COLLECTOR

Appearance:

1. Special Civil Application No. 13689 of 2004

MR AM PAREKH for Petitioner No. 1

Mr.Bhatt, Asst.GOVERNMENT PLEADER for Respondent No. 1-3,5

MR HN BRAHMBHATT for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 06/12/2004

ORAL JUDGEMENT

Rule. Mr.Bhatt, Ld.AGP waives service of rule on

behalf of respondent Nos 1 to 3 and 5 and Mr.Brahmbhatt waives service of rule on behalf of respondent No.4. With the consent of learned advocates for parties matter is taken for final hearing today.

2. The petitioner has preferred this petition challenging the order, dated 20.9.04 passed by the State Govt whereby the revision has been dismissed.

3. Upon hearing the learned advocates for parties, it appears that there is no dispute on the point that this court (Coram: M.R.Shah,J) as per the order, dated 9.7.04 in SCA No.6420/04 directed the Secretary to decide the stay application. One of the grievances raised by the petitioner in this petition is that the Secretary ought not to have decided the whole revision. In my view, such contention can not be maintained because it is always open to the authority to decide the main matter and it is not necessary that it must decide the stay application first and thereafter the main matter. It is dependent upon facts of each case and the only requirement shall be that the parties to the proceedings must be put to notice that the State Govt is to decide the main revision finally.

4. Apart from the above, Mr.Parikh, learned advocate for the petitioner has raised contention that no opportunity of hearing at all has been given and in his submission the communication is not at all received by the petitioner regarding the date fixed for hearing. He submitted that it was sent by ordinary post and after the order is communicated the petitioner has received the communication. Mr.Brahmbhatt for the Municipality submitted that the Municipality has received the communication and therefore the it must be deemed to have been received by the petitioner also. Mr.Bhatt, Ld.AGP is unable to show any authenticated material showing that the communication was made to the petitioner regarding the date fixed for hearing . Under the circumstances, in the absence of any material produced before this court by the respondent authorities, this court is required to accept the contention that the intimation was not given to the petitioner well in time so that the petitioner may make representation even if the revision is to be finally heard.

5. Under the above circumstances, the order passed by the State Govt deserves to be quashed on the ground of breach of principles of natural justice. Hence,the same is quashed and set aside with further direction that the revision shall stand restored to the file of the State

Govt and the concerned officer of the State Govt shall hear the revision after giving intimation to all the parties to the proceedings by registered Post AD and shall render decision as early as possible preferably within a period of three months from the date of receipt of writ of this court.

It is made clear that if after the intimation is received by the concerned parties through Regd.A.D. and either of the parties does not remain present including the petitioner herein, it would be open to the concerned officer of the State Govt to pass order in accordance with law on merits unless he takes decision for adjournment of hearing if sufficient cause is made out for such purpose.

6. The petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

6.12.2004 (JAYANT PATEL,J)